

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AMEREN TRANSMISSION COMPANY OF ILLINOIS)	
)	
Petition for a Certificate of Public Convenience and Necessity, pursuant to Section 8-406.1 of the Illinois Public Utilities Act, and an Order pursuant to Section 8-503 of the Public Utilities Act, to Construct, Operate and Maintain a New High Voltage Electric Service Line and Related Facilities in the Counties of Adams, Brown, Cass, Champaign, Christian, Clark, Coles, Edgar, Fulton, Macon, Montgomery, Morgan, Moultrie, Pike, Sangamon, Schuyler, Scott and Shelby, Illinois.)	Docket No. 12-0598

MOTION TO COMPEL OR IN THE ALTERNATIVE TO BAR TESTIMONY

Stop the Power Lines Coalition (“Coalition”), by its counsel, Hinshaw & Culbertson LLP, moves for entry of an order compelling Ameren Transmission Company of Illinois (“ATXI”) to answer STPL Data Requests 4.02 and 4.03 directed to ATXI, or to bar testimony or argument concerning the topics of the STPL data requests that ATXI refused to answer. In support of its motion, the Coalition states:

1. There is an Emergency Watershed Protection Program-Floodplain Warranty Easement (“EWPP” Floodplain Easement”) that is recorded in Clark County and reflects that the United States government purchased the Easement in the name of the Natural Resources Conservation Service (“NRCS”) for \$550,000. A copy of the federally owned EWPP Floodplain Easement is attached as Exhibit 1. The map produced and filed by ATXI as part of ATXI 4.2 (Part 86), page 2 of 2, reflects that ATXI’s Primary Route in Clark County is designed to cross over the federally owned EWPP Floodplain Easement. Based on public comments that have

been filed in this proceeding by NCRS, the terms of the easement itself, and governing federal regulations codified at 7 C.F.R. §624.10, it appears extremely unlikely that ATXI can build its Primary Route on the EWPP Floodplain Easement property. For that reason, the Coalition served STPL Data Requests 4.1 through 4.5 on ATXI on March 14, 2013. The requests were designed to ferret out the communications between ATXI and NCRS, and to explore how ATXI proposed to deal with the EWPP Floodplain Easement issues.

2. Sometime very late in the evening on March 28, 2013, or perhaps in the early morning hours of March 29, ATXI posted on its extranet website the responses to STPL Data Requests 4.01 through 4.05. A copy of ATXI's responses to STPL Requests 4.01 through 4.05 is attached as Exhibit 2.

3. ATXI's response to STPL 4.01 although artfully drafted, effectively admits that ATXI's Primary Route in Clark County is designed to be constructed on the EWPP Floodplain Easement Property. ATXI's response to STPL 4.05 and related attachments reflect that ATXI knew even before it filed its Petition in this matter that the NCRS would oppose use of the EWPP Floodplain Easement property for construction of the Primary Route, ATXI Attachment 1 to STPL 4.05 DRR; and that position is reiterated and reinforced in a February 27, 2013 certified letter that NCRS sent to Edward C. Fitzhenry, counsel for ATXI in this matter, ATXI Attachment 2 to STPL DRR.

4. In STPL 4.02, the Coalition asked ATXI how it planned to construct the proposed 345 kV transmission line on the Primary Route in Clark County given that the EWPP Floodplain Easement specifically precludes building structures or digging on the Easement property. STPL 4.03 asked ATXI how it planned to acquire property rights that either were superior to those of the federal government or that would extinguish the federal government's easement rights in

light of the terms of the EWPP Floodplain Easement itself and the provisions of 7 C.F.R.

§624.10. ATXI's response to both STPL 4.02 and 4.03 was identical:

ATXI objects to this request as calling for a legal conclusion. ATXI further objects that the data request is argumentative and not the proper subject for discovery.

5. While ATXI's objections to STPL 4.02 and 4.03 on the grounds that they call for legal conclusions might be technically correct in another context, in this proceeding it is ATXI's burden to prove that it can build its proposed 345 kV line on the Primary Route identified by ATXI in this proceeding. Under section 8-406.1(a)(1)(B)(vii) of the Public Utilities Act, the "applicant shall provide and identify a primary right-of-way and one or more alternative rights-of-way for the Project as part of the filing." 220 ILCS 5/8-406.1(a)(1)(B)(vii). By necessary implication, the statute requires ATXI to identify a right-of-way on which the ATXI Primary Route can be constructed. Given ATXI's statutory burden of proof, ATXI cannot evade answering direct questions about how it plans to acquire federal government property interests on the Primary Route identified by ATXI in its Petition.

6. Pursuant to Section 200.350 of the Commission's Rules of Practice, the Coalition's counsel, Ed Gower, sent ATXI's Eric Dearmont an April 2, 2013 email advising Mr. Dearmont that the Coalition believes it is entitled to answers to STPL 4.02 and 4.03 and requesting that Mr. Dearmont call Mr. Gower to discuss the issue. A copy of that email is attached as Exhibit 3.

7. Two and a half days later, Mr. Dearmont sent Mr. Gower an email advising that: "At this time, ATXI will be standing on its objections to STPL 4.02 and 4.03." A copy of that email is attached as Exhibit 4.

8. ATXI's response concerning its failure to respond to STPL Data Requests 4.02 and 4.03 also noted:

In addition to objections/response provided in response to those particular requests [STPL 4.02 and 4.03], please note the Company's response to STPL 4.04, in which we state that should we be unable to obtain an easement on or across the EWPP tract(s), we believe a modified primary route will continue to permit us to construct the line from the Kansas sub to the Indiana state line.

9. While ATXI's response to STPL 4.04 does make reference to and attaches a "modified route", that "modified route" is not part of the ATXI Primary or Alternate Routes that were filed in this proceeding. Until ATXI's late night discovery response on March 28, to the best of the Coalition's knowledge, no document filed in this proceeding made any reference to a "modified route," nor was the "modified route" ever identified in any discovery in this proceeding. Furthermore, ATXI has not formally proposed construction on the "modified route"

10. The fact that ATXI has drawn a new "modified route" on a map does not excuse ATXI from answering questions whether it can in fact build the only Primary Route through Clark County that: (1) ATXI has filed in this proceeding; and (2) for which ATXI has given the requisite notice to the potentially affected landowners.

11. In light of the foregoing, the Coalition requests that either: (1) ATXI should be compelled to fully answer STPL Data Requests 4.02 and 4.03; or (2) ATXI should be barred from submitting testimony or argument concerning ATXI's interpretation of the EWPP Floodplain Easements or any "modified route" to avoid such Easements.

WHEREFORE, the Stop the Power Lines Coalition prays that the Administrative Law Judges issue an order that either: (A) compels ATXI to fully answer STPL Data Requests 4.02 and 4.03; or (B) bars ATXI from introducing any testimony or argument concerning

interpretation of the EWPP Floodplain Easement and any “modified route” to avoid such impediments.

Respectfully submitted,

Dated: April 15, 2013

STOP THE POWER LINES COALITION

/s/ Edward R. Gower

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